IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO.488 OF 1990

Maharashtra State Road Transport)
Corporation, Maharashtra Vahatuk)
Bhavan, Dr.A.N.Marg, Bombay - 8.).. Appellant
(Org.Opponent)

Vs.

1. Shrishail Basavraj Katagi,)

2. Ravindra alias Rajendra)
Basavraj Katagi,)

3. Deepak Basavraj Katagi,)

4. Mangala Basavraj Katagi,)

5. Shivanand alias)
Vijay Basavraj Katagi,)

6. Shanta Basavraj Katagi,)
(No.5 minor by his, guardian)
ad litem, No.6)).. Respondents

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Shri G.S.Hegde for the Appellant.

S/Shri N.V.Walawalkar with Shri G.H.Keluskar, Sudhir Prabhu and Devidas Keluskar for respondent Nos.1 to 6.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 16TH SEPTEMBER, 2005.

ORAL JUDGMENT : (Per V.M.Kanade, J)

1. The award passed by the Motor Accident Claims Tribunal, Satara, in Motor Accident Claim Petition

No.127 of 1986 is being challenged by the appellant-Maharashtra State Road Transport Corporation. The Motor Accident Claim Tribunal, hereinafter referred to as "the MACT", by its common judgment and award dated 31st December, 1988, in respect of 19 applications filed for compensation against the Maharashtra State Road Transport Corporation, hereinafter referred to as "the MSRTC", had awarded compensation to the respondents to the tune of Rs.2,52,000/- with interest at the rate of 12 per cent per annum from the date of filing of the petition till realisation of the said amount.

FACTS:

2. Brief facts of this appeal are as under:-

. The S.T.bus owned by the appellant-MSRTC, which was travelling from Satara to Bombay on 17th January, 1986, had met with an accident in Khambatki Ghat, Lonawala, and the bus fell into a valley which was approximately 327 feet deep and, as a result of the said accident, all the 39 passengers, driver and conductor of the said bus were killed on the spot. Several claims were filed by the claimants, who are relatives of the persons who expired in the said

accident. The MACT with the consent of all the parties recorded common evidence in respect of all these cases and granted compensation to the various claimants, as per their respective claim in the claim petitions. In the present case, the respondents herein had claimed compensation of Rs.11,80,000/-. However, the MACT granted compensation to the tune of Rs.2,52,000/- with interest at the rate of 12 per cent per annum. The MSRTC filed an appeal only in respect of the present case and no appeal had been preferred in respect of other 18 claimants in the said cases. After the appeal was admitted, cross objections were filed by the respondents/claimants for the balance amount of their original claim.

3. In support of their claim, the claimants examined the eldest son of the deceased and Income Tax Practitioner Balkrishna Diwanji. The MACT, after appreciating the evidence on record, came to the conclusion that the dependency of the claimants was to the extent of Rs.3,000/- per month and considering the age of the deceased, the MACT was of the opinion that the suitable multiplier would be 7 and accordingly calculated the compensation to the tune of Rs.2,52,000/-.

SUBMISSIONS:

4. Learned counsel appearing on behalf of the S.T.Corporation strenuously urged before us that the compensation awarded by the MACT was excessive. He has taken us to the evidence of Shri Katagi and Income Tax Practitioner Shri Balkrishna Diwanji, who were examined by the claimants. He submitted that Shrishailya admitted in his deposition that the net profit for the year 1984-85 of their firm-Katagi & Co. was Rs.66,000/- and that the father had 50% share and three younger brothers had 50% share. Learned counsel submitted that the income of the deceased was therefore quantified at Rs.33,000/- per annum. He submitted that out of all the claimants, only two sons were minor and the other sons were major and were not dependent on the father. He submitted that the age of the widow of the deceased was 45 years and that the firm had continued to carry on business and had not been established that the firm had sustained loss on account of death of the deceased. He invited our attention to the admission given by the Income Tax Practitioner Shri Diwanji that the returns for the year 1985-86 were not finalised and no accounts had been submitted by the claimants to the Income Tax Authorities, though, he had consistently requested the

claimants to submit the same. On the basis of this admission, learned counsel therefore submitted that there was no loss sustained by the family, as a result of death of the deceased. He further submitted that so far as the agricultural income is concerned, the children had continued to raise crops and there was no loss in the agricultural income. He invited our attention to the statement of Shri Shrishailya in his cross examination, wherein he has stated that his father used to do agriculture by hired labour and there were two permanent agricultural servants and even after the death of his father, the same servants were working with them and they continued to take the same crops as before. Learned counsel therefore submitted that at the highest, the dependency would not be more than Rs.2,200/- and the multiplier would be, at the highest, Rs.5/- and not Rs.7/-. He further submitted that Section 163A was added by way of amendment to the Motor Vehicles Act in the year 1994 giving the manner in which the multiplier had to be applied and the cut off date is mentioned in the Second Schedule. He submitted that according to the said Schedule, considering the age of the deceased and his income, the claimant could not be entitled for compensation of Rs.2,52,000/-. He further submitted that the MACT had awarded interest at the rate of 12

per cent per annum which was on the higher side. He submitted that, at the highest, interest could have been awarded at the rate of 7.5 per cent per annum. In respect of all these submissions, learned counsel appearing on behalf of the MSRTC relied on the judgment of the Supreme Court in the matter of **Tamil Nadu State Transport Corporation Ltd. v. S.Rajapriya & Ors.,** reported in 2005(5) ALL MR (S.C.) 575.

5. On the other hand, learned counsel appearing on behalf of the respondents-claimants vehemently urged that the MACT ought to have awarded compensation taking into consideration the net profit of the claimants and higher multiplier ought to have been fixed and accordingly the compensation ought to have been awarded.

FINDINGS AND CONCLUSION:

6. In the present case, before we consider the rival submissions, it must be noted that the claimants were travelling by the S.T.bus, owned by the S.T. Corporation which is established by State of Maharashtra which is an instrumentality of the State and it virtually has the monopoly in respect of transport of passengers from place to place in the

State of Maharashtra, save and except, the few licences which were given to other transport operators on the major routes connecting its cities. Otherwise, all over Maharashtra, the citizens of the State have no other option but to rely on the S.T.bus as this is the only mode of transport as railways are not connected to each and every village of State of Maharashtra. It is needless to state that it is the primary responsibility of such a State to ensure safety of their passengers and it is expected from the State of Maharashtra, which is a welfare State, that a policy decision ought to have been taken to settle the claims of people who died in the gruesome accident, on their own or after private negotiations, instead of making the claimants run from pillar to post to make such claims. Be that as it may, it would be necessary to examine the facts and the evidence in the present case in order to see whether the MACT has properly granted compensation to the claimants or not?

7. Learned counsel appearing on behalf of the Appellant/MSRTC has contended that under Section 163A of Motor Vehicles Act, which Section by way of amendment was introduced in the year 1994, a simple method of calculation of compensation had been laid down and since 1994 the same method was invoked and

was being used for the purpose of deciding compensation. He invited our attention to the Second Schedule which was incorporated after the amendment to Section 163A of the said Act. He submitted that from the perusal of the said Schedule and the claim of the claimants, it is clear that the MACT had granted compensation on the very higher side.

8. In our view, it is not possible to accept the submission made by learned counsel appearing for the MSRTC. It may be relevant here to refer to Section 163A, which was brought into force by way of amendment in 1994. Section 163A reads as under:-

> "163A. Special provisions as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation: For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicle concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

9. From the aforesaid Section and particularly Section 163B of the said Act, it is abundantly clear that an option is given to the claimant either to file application for claim under Section 163A or under Section 140. Under Section 163A, no burden is cast upon the claimant either to plead or prove negligence

or other default in respect of the accident and compensation would be arrived at as per the structured formula which is given in Schedule II of the said Act. In the present case, it is an admitted position that the petition for compensation has not been filed under Section 163A since, at the relevant time, the said Section was not in existence. Therefore, the submission made by learned counsel appearing on behalf of the appellant cannot be accepted. Even otherwise, the claimant has an option of filing claim under Section 166 and make specific averment regarding negligence of the driver and prove the same by leading evidence. In such cases, obviously, he can claim as per the loss suffered by him and such claim can be higher than the one claimed under Section 163A and the structured formula provided in the Second Schedule. The submission of the counsel that the formula under Second Schedule would be applicable cannot be accepted as in the present case, the application has been filed under Section 166.

10. Three questions, which are required to be dealt with by this Court, are that, firstly, whether there was any negligence on the part of the driver of S.T.bus, as a result of which, 39 passengers died? Secondly, what is fair compensation which can be

awarded to the claimants in a particular case, after considering the various factors and method which is popularly known as "multiplier method of calculating compensation", and thirdly what would be the interest which can be paid on the said compensation which is so arrived at ?

11. So far as the question of negligence is concerned, the MACT has given a finding that the driver of the S.T.bus was negligent. A defence was set up by the S.T.Corporation that the driver was not negligent and that a tempo had suddenly come in front of the S.T.bus and in order to prevent the collision, the driver had taken a turn towards the wall and the wall which was constructed by the government being weak, it broke and the S.T.bus fell into the deep valley. In support of the said defence, the Corporation examined two witnesses viz. (i) Shri Shinde, Traffic Controller, and (ii) Shri Kadam, Assistant Traffic Superintendent. From the record, it can be seen that both these witnesses have not stated anything about the weakness of the said wall. The evidence which has come on record shows that though the tempo was standing at the site of accident, it was not damaged in any way and further there was a tar road of 21 ft. with kachha portion of 5 and 2 & 1/2

ft. on either side.

12. In our view, considering the evidence on record, there is no manner of doubt that the driver of the S.T.bus had acted in a negligent manner and, as a result of his negligence, the S.T.bus had rammed into the parapet wall and after breaking the wall, the S.T.bus fell down into the deep valley. In our view, therefore, there is no infirmity in the findings recorded by the MACT.

13. So far as the second point as to what would be the correct multiplier which should be made applicable in the present case is concerned, it is an admitted position that the wife of the deceased was 45 years old, two sons were major and one son and one daughter were minor being 17 and 15 years of age, respectively. It has also come on record that the net turnover of the firm was to the tune of Rs.44 lakhs in the year 1982-83. Rs.35 lakhs in the year 1983-84 and it was Rs.64 lakhs in the year 1984-85 and that the deceased was carrying on the business of dealership in fertilizers and that her two sons were also the partners in the said firm. The father had 50% share and the two sons had 50% share. The eldest son however in his evidence stated that the net profit

from the business during the relevant period for the year 1984-85 was Rs.66,000/- and that the agricultural income was Rs.15,000/- for the same period. Though much emphasis was laid by learned counsel appearing on behalf of the appellant on the fact that the returns for the subsequent year had not been finalised and that the loss of income as a result of death of father had not been established, in our view, it is not possible to accept the said submission as the evidence of the claimants has to be considered in its totality and reliance cannot be placed on a stray statement in the cross-examination. Basavraj, in his cross-examination, has categorically denied the suggestion put to him that there was no loss of business after the death of his father. In fact, in the cross-examination, this witness has stated that before the death of his father, before 5 to 6 years, the firm was supplying cotton-bales to the spinning mills at Ichalkaranji and after death of his father the said contract was not continued. It must be noted here that while arriving and deciding the question of compensation which is to be paid or the loss which had caused to the family cannot be weighed in golden scales, but an overall view has to be taken to find out the extent of loss which the family had suffered. If the argument advanced by learned counsel appearing

on behalf of the appellant is accepted, it would take us to the absurd conclusion that, in fact, after the death of father, no loss was caused to the family and in fact they had somehow benefited in some respect. Considering therefore the fact that the widow was of 45 years of age and if the life expectancy of a person in India is taken into consideration, the widow would have lived atleast for another 20 years. Judicial notice also can be taken of the fact that, in India, particularly after the marriage of the children, the widow is not necessarily being looked after by the sons. In this context, therefore, the dependency of the wife, widow of the deceased, would be treated as 20 years and that of the deceased would be 65 years of age. Though there is no evidence on record regarding state of health, it can safely be assumed that had he not been died due to an accident, he would have continued to carry on his business at least for another 15 to 20 years. It is no doubt true that two of the claimants were major at the time when their father died. However, two children were minor, one was unmarried daughter and other was a minor son. So, at least for a period of 5 years, they would have been dependent on their father. In our view, therefore, the multiplier which has been calculated by the MACT at Rs.7/- is slightly on the lower side and the

correct multiplier, in our view, would be Rs.12/-. The second question, which will have to be determined, is what would be the amount which would have been spent by the deceased on his dependent members of the family. It is, no doubt, true that the net profit of the firm during the relevant period was Rs.66,000/- and that his two sons were also partners in the said firm having 50% shares, yet, merely because the deceased had 50% shares, it cannot be said that his income was Rs.33,000/- per annum, as contended by learned counsel appearing on behalf of the appellant. It cannot be forgotten that very often, for the purpose of distribution of tax liability for the benefit of the family members, sons are made partners in the business. Net profit of Rs.66,000/- therefore will have to be treated as net income of the deceased. If certain deductions are made on the amount which would have been spent by the deceased on himself, in our view, roughly the amount of Rs.45,000/- would have been spent by the deceased on his dependency. Thus, considering this amount of Rs.45,000/- and multiplier of Rs.12/-, in our view, the claimants would be entitled to get a sum of Rs.5,40,000/- (Rs.45,000/- x 12). It must be noted here that while calculating the aforesaid amount, the various other factors are also taken into consideration.

14. So far as the interest is concerned, it is no doubt true that in the recent years, the Supreme Court has taken the view that since the rate of interest which a person gets from fixed deposit or other investments has been reduced to 7.5% to 9%. In the case of **Tamil Nadu State Transport Corporation Ltd. (supra)**, the Supreme Court taking note of the prevailing rate of interest in bank deposits had fixed the rate of interest at 7.5% per annum. Here in the present case, in our view, the claimants would be entitled to get interest at the rate of 12% from the date of their claim at the year ending of 1999 and thereafter at the rate of 7.5% per annum till the date of realisation. It must be noted here that the claimants so far have received only Rs.1 lakh during the pendency of the appeal.

15. Before parting with the matter, we would like to record that the S.T.Corporation being instrumentality of the State cannot ignore its obligation towards the public at large particularly when it fails in its duty to maintain standard of safety which is expected towards its passengers and also considering the fact that we are a welfare State, it is expected that such an instrumentality of the

State should not make the passengers to run from pillar to post and raise frivolous objections and arguments for the purpose of defeating the claim of the claimants. It was expected that in such a tragic accident which had occurred solely because of the negligence on the part of the driver of the S.T.bus, the higher echelons of the management of the S.T.Corporation ought to have paid suitable compensation promptly or at least negotiated with the claimants and should have paid some reasonable compensation promptly instead of dragging the claimants to the Court. We hope and trust that at least in future, the Management of the MSRTC would frame a suitable policy in such cases of tragic accident which takes place due to negligence of their own drivers and pay reasonable compensation promptly to the claimants/passengers of the S.T.bus.

16. In the facts and circumstances of the case, the Appeal filed by the MSRTC is dismissed and the Cross Objections filed by the respondents-claimants are partly allowed with costs which are quantified at Rs.10,000/-. The Appeal and the Cross Objections are disposed of in above terms.

17. The appellant shall pay compensation with

costs and interest as stated hereinabove within a period of 12 weeks from today.

(R.M.S.KHANDEPARKAR, J)

(V.M. KANADE, J)